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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

HAROLD E. DERRY, JR.,

Defendant and Respondent.

F040743

(Super. Ct. No. SC054436A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Richard J. Oberholzer, Judge.

Peter Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Janis Shank McLean and Michael Dolida, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Harold E. Derry, Jr., appeals from his two-year extended commitment under the Sexually Violent Predators Act (SVPA). (Welf. & Inst. Code, § 6600 et seq.)

* Before Vartabedian, Acting P. J., Levy, J., and Gomes, J.

A jury had found true the allegations of the petition filed pursuant to the SVPA. Defendant claims on appeal the trial court erred in not requiring proof that defendant had committed two predicate “predatory” sexually violent crimes and the SVPA is unconstitutional. In light of case law directly to the contrary, we affirm.

We need not elaborate concerning the facts and proceedings that led to this appeal. In short, defendant has a criminal history of molesting minor males. At the trial on the petition to recommit him to Atascadero State Hospital, two psychologists testified for the prosecution. These psychologists opined that defendant’s pedophilia substantially affected his volitional control, making him a high risk to reoffend if released into the community. Two other psychologists, testifying for the defense, took the view that defendant did not suffer from a mental disorder that would cause him to be classified as a sexually violent predator. One defense psychologist noted that defendant simply chose to engage in molestative behavior and was not remorseful. Both defense psychologists took the position there was no reliable method to predict defendant would reoffend.

On appeal, defendant first argues the trial court erred by failing to require the prosecution to prove the two predicate offenses involved predatory sexually violent offenses. Defendant concedes that the California Supreme Court in *People v. Torres* (2001) 25 Cal.4th 680 addressed this issue and determined that no such proof is required. Pursuant to *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, we are bound by this precedent.

Defendant’s remaining argument challenges the constitutionality of SVPA. He lists the following claimed violations: due process, equal protection, ex post facto, double jeopardy, and cruel and unusual punishment. Again, we are bound by precedent rejecting defendant’s claims, this time from both the United States Supreme Court and the California Supreme Court. (*Kansas v. Hendricks* (1997) 521 U.S. 346; *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138; and *People v. Chambless* (1999) 74 Cal.App.4th 773, 776.)

We note defendant asserts that his equal protection claim was not addressed in *Hubbart*. To the extent that the *Hubbart* Supreme Court case, due to the failure of the appellant there to timely raise the issue, declined to consider the same claim made here, appellate court authority has directly rejected the equal protection argument and we choose to follow that authority. (*People v. Hubbart* (2001) 88 Cal.App.4th 1202, 1216-1225; *People v. Buffington* (1999) 74 Cal.App.4th 1149, 1155-1164; *People v. Poe* (1999) 74 Cal.App.4th 826, 833.)

The judgment is affirmed.